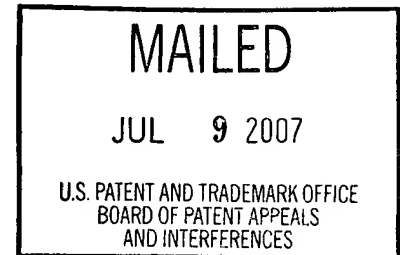2

3   UNITED STATES PATENT AND TRADEMARK OFFICE

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5

6   BEFORE THE BOARD OF PATENT APPEALS
7   AND INTERFERENCES

8

9

10   Ex parte MATTHEW ROZEK and
11   BART FULLER

12

13

14   Appeal 2007-1235
15   Application 09/748,125
16   Technology Center 2100

MAILED

JUL 9 2007

U.S. PATENT AND TRADEMARK OFFICE
BOARD OF PATENT APPEALS
AND INTERFERENCES

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19   Oral Hearing Held: June 6, 2007

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23 Before HUBERT LORIN, ANTON FETTING, and LINDA HORNER
24 Administrative Patent Judges

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27 ON BEHALF OF THE APPELLANT:

28

29   PHILLIP J. ARTICOLA, ESQUIRE
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33

34   The above-entitled matter came to be heard on June 6, 2007,

35 commencing at approximately 9:14 a.m., at the United States Patent and

36 Trademark Office, 600 Dulany Street, Alexandria, Virginia.

37

1   JUDGE LORIN: Good morning, Counsel. Mr. Articola?

2   MR. ARTICOLA: Yes, that's correct.

3   JUDGE LORIN: Welcome. This is appeal number 2007-1235.

4 We're familiar with the case. You may go to the dispositive issues. Proceed

5 when you're ready.

6   MR. ARTICOLA: This is a brief of the invention. It relates to a

7 business-to-business electronic converse system whereby you convert from a

8 document of one type to a document of another format. In this case in the

9 claims, the translator checks compliance of a document for translation from

10 a first format, a source format, to a desired target format. During that

11 translation, errors that are detected during the translation are captured and

12 stored in a tracking database along with an identifier, or the identifier is

13 basically obtained from document itself for later correlation.

14   In the rejections of the claims, basically the rejection of the

15 independent claims is over two references, Ricker, the primary reference,

16 and Puckett. Ricker, the rejection was based on it shows an EDI to XML or

17 vice versa translation system where the pertinent words in that document are

18 that it performs translation using an EDI message as translated to a well

19 formed XML document. The examiner interpreted that as well, it's

20 performing translation. To do a well formed document it must determine the

21 errors and store the errors.

1   With all due respect, yes, it's performing a translation, but there's no

2   teaching or suggestion that errors are being stored anywhere. It's just doing

3   its best in the translation, a standard translation. It seems to be a stretch to

4   go from, yes a translator translates a document from format one to format

5   two, to say that by doing that it's detecting errors, storing those errors and

6   storing them with some kind of identifiers.

7   JUDGE LORIN: Counsel, I'd like to stop you for a second because I

8   read this argument you're making in the brief. You mentioned in the brief

9   that Ricker doesn't show that the translation error is captured in the tracking

10   database. That's what the examiner is using Ricker for. I looked at the final

11   objection and I looked at the answer and the examiner is using Puckett for

12   that.

13   MR. ARTICOLA: Yes, he's using Puckett for the fact that there's an

14   error log. So the fact that there's an error log in Puckett, Puckett's facing a

15   system where it's thousands of sensors all over the place. Each of those

16   sensors is outputting data, and say, okay, there's an error in this pump at time

17   X1 and there's an error in this boiler at time T2. All that data is being stored

18   into a database, now an error log database. What happens then is a translator

19   translates that data so they can be parsed, so it turns into English language

20   equivalent. So I can say, you know what, tell me what all the errors that

21   occurred in pump 15 between Sunday, June 5 and Monday, June 6.

1   Based on that translator doing that translation, it can then pull the

2   relevant data. The translator is translating error data. It's not the fact that

3   the data of a translator is being stored in a log data base; it's almost looking

4   at two different things entirely. In Puckett we aren't looking at the problems

5   with the translator doing translation. The translator is doing it fine. It's just

6   translating error data per se, while we have a translator and the translator is

7   doing its thing and errors are occurring and those errors of the translation are

8   being stored. So irrespective of how you look at Ricker and Puckett, Puckett

9   clearly is doing an entirely different thing and entirely different stuff.

10   It's not so we combine Ricker with Puckett, what do you get? I don't

11   know, but you certainly won't get a translator doing its thing, errors coming

12   out of translation and being stored in an error database. Rather you would

13   have an error database and then the translator is doing its thing on that,

14   where the translator is presumably doing fine and the translator provides

15   error data in a different format.

16   JUDGE LORIN: Let me see if I understand what you're saying. You

17   can see that Ricker shows capturing errors, but not in a database. They have

18   a translator and they recognize errors in the translation, right? Then you

19   have Puckett that also recognizes errors. The errors are captured in a

20   database. But then you're saying they're going one step further and taking

21   those errors in the database and translating them?

1 MR. ARTICOLA: Right. We are looking at the errors of the

2 translator. The translator is saying, I'm going to work on this error database

3 and translate it into a format that you can then parse with queries to pull

4 what you want. That's totally different from saying, Puckett's translator is

5 doing something and doing it incorrectly and we're storing those errors in a

6 translator error database and then later on using that stuff.

7 That's not what Puckett's doing. Puckett's translator is working on an

8 already determined error database of sensors. Those sensors aren't doing

9 translation. Those sensors are just sensing signals and power and

10 temperature and performing that process. Perhaps you're right about how we

11 interpreted Ricker, but the combination, Puckett really goes off to left field

12 doing something interesting, but clearly not in terms of how we're claiming

13 it.

14 JUDGE LORIN: My understanding, are you saying it teaches a way,

15 or what does Puckett do?

16 MR. ARTICOLA: It just doesn't teach anything close to what we're

17 doing. It's not using a translator and a translator having errors, and those

18 errors are the translation itself being stored in an error database. Rather the

19 translator of Puckett is translating already determined error data from

20 sensors and processing that data to a different format. They both miss the

21 fact that the translation errors of a translator are stored in an error database.

22 Rather, it's the errors of sensors are translated and then stored in an error

1   database, or a second error database. It's basically directed to a different

2   claim which we certainly don't have. That's sort of the major arguments

3   concerning the independent claims. There's a secondary argument with

4   Yang.

5   MR. LORIN: Let me stop before you get to Yang. You had another

6   argument that the references didn't teach linking an identifier. Do you want

7   to speak to that for a second? Your brief has two issues with regard to

8   Puckett and Ricker, the first which you just discussed, extracting data and

9   putting into the database, and the second one was that there's no linking of

10 an identifier with the error data in the database.

11   MR. ARTICOLA: Yes, again because Puckett isn't looking at the

12 errors of the translator itself, so it's not really pertinent to what Puckett is

13 doing. Our argument there, it's more like Puckett isn't directed to a

14 document to document thing. It's more like here are these sensors. The

15 sensor data is already in the database and it's going to do a translation of

16 that data.

17   It doesn't care that this data point, it got stored in memory location

18 five, comes from whatever; it's just doing a translation of it and letting you

19 decide with a query what you can pull. It doesn't care that this data here

20 comes from document 15 of an EDI system because that's not what Puckett's

21 doing. Puckett's just collecting a vast amount of data from a big system --

22 like I said, consider Crystal City's power system -- storing it and letting the

1   translator do its thing to it. It doesn't care, like I say, where everything is

2   tied to because what you do to queries, the queries will pull the relevant

3   data. The translator is just going to translate it and leave it at that.

4   I think the second argument was more about the fact that Puckett

5   really doesn't deal with electronic interchange system and so it doesn't need

6   to do that identifier part because it's not really pertinent to what it's doing, if

7   that makes any sense.

8   JUDGE LORIN: It sounds like you're trying to make an non-

9   analogous kind of --

10   MR. ARTICOLAL: Sort of, yes. It's just not in the same area as

11   Ricker, for example. Ricker definitely isn't an EDI system; there's no doubt

12   about that.

13   JUDGE LORIN: Thank you. You also discuss claims 11 and 12; do

14   you want to speak to that for a second?

15   MR. ARTICOLA: Yes. Let me check on those real quick. Again it

16   goes, Puckett really isn't dealing with EDI where documents of different

17   types are being converted from type one to type two, and therefore, Puckett's

18   more into the sensor collection system. The features in claims 11 and 12,

19   which are really directed to a document and developing information, there is

20   no document . There is no developing information in Puckett because

21   Puckett doesn't deal with documents; it deals with sensor, temperature,

22   pressure. Those features 11 and 12, document and developing information,

7

1   those aren't pertinent to what Puckett is doing because Puckett isn't looking

2   at document data.

3   JUDGE LORIN: Are you saying that the prior art must teach that the

4   error that's being stored in the database must be errors from a document,

5   secondary art must show that?

6   MR. ARTICOLA: Are you talking about the independent claims?

7   JUDGE LORIN: Correct.

8   MR. ARTICOLA: Claim one says attempting translation of a

9   document and capturing error data representing errors detected in the

10   translation to a tracking database. So errors are done during translation of

11   the document to a tracking database. It's during the translation time period

12   we're capturing error data of the document. So, yes. It's whatever claim C,

13   step C of claim one recites, which is during this translation, capturing error

14   data, representing errors detected in the translation of the document to a

15   tracking database.

16   JUDGE LORIN: You were also going to speak to claims 21 and 22.

17   MR. ARTICOLA: Yes, those claims go with sort of display of the

18   internal document identifier to identify translation errors, data. In that case,

19   the examiner utilized Yang, which is a translation system in general that

20   deals with scripts, queries, where it translates from script language so you

21   can then perform your -- again, parsing information from this script.

22   In Yang he adds a general system dealing with translations, but it

1   doesn't use identifiers and it's also, again, not really pertinent to what we're

2   doing. It's more shell scripting and application documents, so an

3   application, say Excel, you're running it and you want to perform scripting.

4   It's nothing to do with document interchanges and that.

5   Yes, it's a general translation of a document in format one to a

6   document scripting information so it can be parsed by queries. But that by

7   itself -- and yes, it's display, so it's error in -- I think that software code that

8   was shown in column nine shows error, the translation does not work. Yes,

9   it will provide you with a display that says the translation of this script

10   wasn't performed because it couldn't do it, but that doesn't teach us just the

11   features in claim 21, which is using an internal document identifier.

12   Basically it's looking at the script itself and not some separate identifier,

13   which might be, I don't know, identifier 15 for document four or something

14   like that, to then provide that to the training partner.

15   Again, it's because it's just in a general area of translation. It's not

16   really relevant to what Yang is doing.

17   JUDGE LORIN: Any questions?

18   JUDGE HORNER: I have a question. Let's say for a minute that we

19   agree with your argument that the secondary reference just shows maybe

20   nothing more than a database of errors and identifiers, but it doesn't show it

21   in the context of errors taken from a translated document. Why wouldn't it

22   have been obvious for someone skilled in the art to use that error database

1   for a purpose other than the purpose that it was used for in the reference

2   itself? Why wouldn't it have been obvious to say error databases are known

3   with identifiers as a way to keep track of errors?

4   MR. ARTICOLA: Puckett deals with, like I say, collecting large

5   amounts of data for purposes of allowing you, a translator, to then translate

6   that data, the error data, so that you can then parse it. The purpose of

7   Puckett is you're collecting large amounts of data, error data, and you're then

8   using a translator for converting that data to a format that can be easily

9   parsed by me asking for a query, like I mentioned earlier.

10   That teaching goes totally separate from what Ricker is doing, which

11 is just using a translator and translating it. It doesn't care about the errors of

12 the translator. Ricker is doing good translation or doing its best. To argue

13 that we're going to use Puckett's translator totally different, not just to

14 change error data per se, but now to look at itself. It's almost like I'm using

15 my translator not just to look at the error data, but to check its own

16 operations. It's almost like asking me to grade myself. I'd probably give

17 myself a good grade, but it probably wouldn't be very proper.

18   JUDGE LORIN: That's not how I see it. If you have a reference that

19 has a translator that's checking for errors, Puckett's teaching a completely

20 different translator, correct?

21   MR. ARTICOLA: Puckett's teaching the translator to translate the

22 errors itself.

1   JUDGE LORIN: Right, but if you look at the first reference, one of

2   ordinary skill looking at this reference, and you're getting documents going

3   through the translator and it's capturing errors --

4   MR. ARTICOLA: That argument there, I'm not sure I agree. All

5   Ricker's saying in that short document is it's forming a well-formed

6   document. Who knows what it's doing with the errors? Maybe it's just

7   dropping them and not even caring about them, because it's just trying to do

8   its best.

9   JUDGE FETTING: Wait. Error checking is certainly, I would assert,

10   notoriously well-known. I mean how can you write a program that you

11   expect to sell in commerce that doesn't check for errors?

12   MR. ARTICOLA: Will it store them? Who knows? Does it care

13   about those errors? I have no idea. It probably doesn't care. It doesn't

14   mention anything about where does it --

15   JUDGE FETTING: What would one of ordinary skill in the art do

16   with errors in a system such as this?

17   MR. ARTICOLA: Ricker?

18   JUDGE FETTING: Yes.

19   MR. ARTICOLA: Basically the teachings of Ricker, it would just try

20   its best to translate. It would be a translated document. Whatever errors are

21   there --

1   JUDGE FETTING: What do you do with it? What does one of

2   ordinary skill in the art do with errors in translators? I think it's pretty well-

3   known. I can go to my PC and I can see probably 10,000 log files. Log files

4   are the predominant method of tracking errors. You look in the log file and

5   it has all kinds of identifiers in there. Isn't that the conventional way of

6   tracking errors, especially in a batch process such as this?

7   MR. ARTICOLA: I can't say based on the teachings of Ricker. If

8   you know that to be a fact, I'll have to defer to you. But in Ricker it's just

9   trying to do its translation. But again, Puckett is just looking at the translator

10   to translate its errors -- not its own error, not errors of another translator.

11   Then you have two separate translators and then you're thinking one of

12   ordinary skill becomes one of super ordinary skill in the art and that's where

13   I think it gets --

14   JUDGE LORIN: No, the argument is that in Puckett you're right, it's

15   capturing errors and translating errors.

16   MR. ARTICOLA: Errors of sensors.

17   JUDGE LORIN: In other words, what you're saying is that translator

18   in Puckett could not be applied. It's dealing with something completely

19   different than what is going on in Ricker?

20   MR. ARTICOLA: Puckett was more directed to -- document stuff,

21   and then you might have some kind of -- where you're going might have

22   some relevance, but Puckett's really out there in looking at sensors, my little

1   house alarm system, and looking at that stuff. To say, I'm saying I'm going

2   to look at the house alarm system and look at what that translating is doing

3   to errors, to put that with Ricker then really seems to me you're reaching into

4   combining those two different things that are performing--

5   JUDGE LORIN: Yes, Puckett, there's two different steps going on.

6   They're capturing the errors in another database?

7   MR. ARTICOLA: Right.

8   JUDGE LORIN: That in itself, that piece is well-known; is it not?

9   MR. ARTICOLA: Capturing sensor data, is Puckett's.

10   JUDGE LORIN: You mean other than sensor data it's never been

11   known?

12   MR. ARTICOLA: Capturing data.

13   JUDGE LORIN: Capturing data? You're capturing error in a

14   database?

15   MR. ARTICOLA: Yes. Then Puckett is translating those.

16   JUDGE LORIN: I understand that Puckett is going one step further. I

17   understand that, but just that piece, that it captures errors and then puts it

18   into a database, that's not in and of itself novel, is it?

19   MR. ARTICOLA: The fact that you're capturing errors from devices?

20   No. That by itself --

21   JUDGE LORIN: That by itself--

22   MR. ARTICOLA: If Puckett's teaching capturing of errors --

1   JUDGE LORIN: I know they go one step further.

2   MR. ARTICOLA: Yes.

3   JUDGE LORIN: But they're just taking errors, putting it into a

4   database?

5   MR. ARTICOLA: Right. Does it matter to you to capture the errors

6   of a translator and store those in a database?

7   JUDGE LORIN: No, you're not capturing --

8   MR. ARTICOLA: And then process --

9   JUDGE LORIN: Yes, but your invention is not capturing errors from

10   the translator. You're capturing errors from the document.

11   MR. ARTICOLA: As performed by the translator.

12   JUDGE LORIN: But the translator does nothing more than take the

13   document, compare it to the source with your destination format.

14   MR. ARTICOLA: Right, but the errors are errors detected in the

15   translation, the translation errors.

16   JUDGE LORIN: I understand that, but the translation is very broad.

17   It's just a matter of taking a document, comparing it with the document you

18   want it to look like and marking down the differences.

19   MR. ARTICOLA: Whatever the case may be. It's the translation

20   errors, so the errors during that translation step.

21   JUDGE LORIN: Are then put in a database.

1   MR. ARTICOLA: Then put in a database and stored with identifiers

2   in the step T.

3   JUDGE LORIN: I'm trying to understand your argument. Your

4   argument is that Puckett is directed to storing a type of error that Ricker's not

5   involved in?

6   MR. ARTICOLA: Right. Puckett's in a totally different field in terms

7   of what it's doing, and the translator is translating those errors to let those

8   errors be parsed by some kind of query. It's not that the translator has done

9   something and then those errors are put into a database, then we use another

10   translator to --

11   JUDGE LORIN: Yes, I know, but you're repeating this issue of

12   another translator. Your claims are broad enough to include a second

13   translator to translate the errors?

14   MR. ARTICOLA: Right, but at least Puckett doesn't --

15   JUDGE LORIN: So the issue is not that the art is teaching an added

16   translator because your claim covers adding another translator. The issue

17   really is that you're looking at the two references. One of ordinary skill

18   could not combine these two references, could not combine capturing errors

19   into a database with the comparison of the documents in identifying errors,

20   which is what Ricker does. One of ordinary skill wouldn't combine the two

21   because they're dealing with two different types of errors.

1   MR. ARTICOLA: In two different types of systems completely. One

2   is an electronic document system and one is a sensor collection extraction

3   for thousands and thousands of information. But the information that is

4   being collected, you have to have that information analyzed and processed

5   so that when you do the queries you don't take all day trying to pull out the

6   information. You've done the translation, which makes it so it's much easier

7   and much more compact, so you don't spend 30 minutes on your processor

8   to then extract that information. Because the sensors are outputting

9   continuously the data and there's a lot of processing, a lot of checking going

10   on in that system of Puckett because there's large amounts of data in the

11   error log.

12   JUDGE LORIN: Okay, Counsel, thank you. Any questions? Thank

13   you very much. It's been helpful, and we'll take the case under advisement.

14   Whereupon, at 9:35 a.m., the hearing was concluded.